

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ

**MOTION FOR PERMISSION TO FILE AND SERVE REDACTED
MEMORANDUM IN SUPPORT OF MOTION TO PRESERVE TESTIMONY BY
WAY OF FOREIGN DEPOSITIONS**

Defendant, Hatem Naji Fariz, by and through undersigned counsel, respectfully requests that this Honorable Court permit Mr. Fariz to file a redacted memorandum in support of his Motion to Preserve Testimony by Way of Foreign Depositions. As grounds in support, Mr. Fariz states:

1. Mr. Fariz intends to file a Motion to Preserve Testimony by Way of Foreign Depositions and for Payment of Expenses tomorrow, February 3, 2005, in order to comply with the Court's deadline in this regard. (Doc. 605).

2. Under Federal Rule of Criminal Procedure 15, a party may move to take depositions to preserve testimony under "exceptional circumstances and in the interests of justice." Fed. R. Crim. P. 15(a). The moving party bears the burden of establishing "exceptional circumstances," which include, *inter alia*, making a showing that the testimony to be preserved is material, and that its absence would result in an injustice. *United States v. Drogoul*, 1 F.3d 1546, 1552 (11th Cir. 1993).

3. In order to make such a showing of materiality, Mr. Fariz intends to provide the Court with summaries of the proposed testimony. These summaries, however, are not discoverable under Federal Rule of Criminal Procedure 16(b)(2)(B). Mr. Fariz therefore requests that the Court allow him to file: (1) an unredacted motion under seal, *ex parte*, and (2) a redacted version, omitting the summaries of proposed testimony, which will be filed with the Clerk's office and served on the other parties.

WHEREFORE, Defendant, Hatem Naji Fariz, respectfully requests that the Court allow him to file a redacted memorandum in support of his Motion to Preserve Testimony by Way of Foreign Depositions.

Respectfully submitted,

R. FLETCHER PEACOCK
FEDERAL PUBLIC DEFENDER

/s/ Wadie E. Said
Wadie E. Said
Assistant Federal Public Defender
400 North Tampa Street, Suite 2700
Tampa, Florida 33602
Telephone: 813-228-2715
Facsimile: 813-228-2562
Attorney for Defendant Fariz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of Febuary, 2005, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; William Moffitt and Linda Moreno, counsel for Sami Amin Al-Arian; Bruce Howie, counsel for Ghassan Ballut; and to Stephen N. Bernstein, counsel for Sameeh Hammoudeh.

/s/ Wadie E. Said
Wadie E. Said
Assistant Federal Public Defender